

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

This document relates to: 19-cv-01869, 19-cv-01868, 19-cv-01800, 19-cv-01810, 19-cv-01813, 19-cv-01870, 19-cv-01792, 19-cv-01808, 19-cv-01815, 19-cv-01922, 19-cv-01928, 19-cv-01803, 19-cv-01929, 19-cv-01931, 19-cv-01783, 19-cv-01798, 19-cv-01788, 19-cv-01818, 19-cv-01812, 19-cv-01791, 19-cv-01801.

MASTER DOCKET

18-md-2865 (LAK)

STIPULATION AND [PROPOSED] ORDER DISMISSING COUNTERCLAIMS

Plaintiff-Counterclaim-Defendant Skatteforvaltningen (“SKAT”) and Defendant-Counterclaim-Plaintiffs Cavus Systems LLC Roth 401(k) Plan, Hadron Industries LLC Roth 401(k) Plan, Crucible Ventures LLC Roth 401(k) Plan, Pinax Holdings LLC Roth 401(k) Plan, Sternway Logistics LLC Roth 401(k) Plan, Eclouge Industry LLC Roth 401(k) Plan, First Ascent Worldwide LLC Roth 401(k) Plan, PAB Facilities Global LLC Roth 401(k) Plan, Trailing Edge Productions LLC Roth 401(k) Plan, Cedar Hill Capital Investments LLC Roth 401(k) Plan, Fulcrum Productions LLC Roth 401(k) Plan, Limelight Global Productions LLC Roth 401(k) Plan, Keystone Technologies LLC Roth 401(k) Plan, Tumba Systems LLC Roth 401(k) Plan, Bareroot Capital Investments LLC Roth 401(k) Plan, Cantata Industries LLC Roth 401(k) Plan, Dicot Technologies LLC Roth 401(k) Plan, True Wind Investments LLC Roth 401(k) Plan, Roadcraft Technologies LLC Roth 401(k) Plan, Fairlie Investments LLC Roth 401(k) Plan and Monomer Industries LLC Roth 401(k) Plan (collectively, the “Counterclaim-Plaintiffs”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

WHEREAS, on January 23, 2020, the Court issued its Memorandum Opinion (the “Utah Plans Opinion,” No. 18-md-2865 (LAK), ECF No. 261) granting SKAT’s motion to dismiss the counterclaims the Utah Plans (as defined in the Utah Plans Opinion) asserted against SKAT under Utah law for unjust enrichment and promissory estoppel.

WHEREAS, on January 23, 2020, the Court issued its Memorandum Opinion (the “Goldstein Opinion,” No. 18-md-2865 (LAK), ECF No. 262) granting SKAT’s motion to dismiss the counterclaims Goldstein (as defined in the Goldstein Opinion) asserted against SKAT, including, *inter alia*, under New York law for promissory estoppel.

WHEREAS, on February 3, 2020, the Counterclaim-Plaintiffs each filed responsive pleadings to SKAT’s complaints, in which they asserted materially identical counterclaims against SKAT under New York law for unjust enrichment and promissory estoppel.¹

WHEREAS, on February 24, 2020, the Court so ordered SKAT’s and Counterclaim-Plaintiffs’ stipulation (the “Dismissal Order,” No. 18-md-2865 (LAK), ECF No. 271) dismissing the counterclaims for the reasons set forth in the Utah Plans and Goldstein Opinions, without prejudice to the Counterclaim-Plaintiffs’ right to appeal.

WHEREAS, on June 29 and July 3, 2020, the Counterclaim-Plaintiffs’ filed responsive pleadings to SKAT’s amended complaints, in which each pleaded again the same counterclaims against SKAT as in their February 3, 2020 pleadings.²

1. See First Letter to Judge Lewis A. Kaplan from Michelle Rice re: Filing of Answers and Counterclaims, No. 18-md-02685, ECF Nos. 264, 264-1-2, 264-4-5, 264-8-11, 264-13-18, 264-20-22 & 264-24-25; Letter to Judge Lewis A. Kaplan from Michael G. Bongiorno re: Filing of Answers, No. 18-md-02685, ECF Nos. 266 & 266-4-5.

2. See Letter to Judge Lewis A. Kaplan from Michelle Rice re: Answers Filed in Related Actions, No. 18-md-02685, ECF Nos. 399, 399-1-2, 399-4-5, 399-8-12, 399-13, 399-15-18, 399-20-22 & 399-24-25; Letter to Judge Lewis A. Kaplan from Michael G. Bongiorno re: Answers filed in the MDL, No. 18-md-02685, ECF Nos. 380 & 380-4-5.

WHEREAS, SKAT otherwise intends to move the Court for an order dismissing the counterclaims pleaded by Counterclaim-Plaintiffs in their June 29 and July 3, 2020 pleadings on the grounds that such claims are barred by the Dismissal Order and on the bases of the Utah Plans Opinion and Goldstein Opinion.

NOW THEREFORE, the parties hereby stipulate and agree as follows:

1. The Court's Dismissal Order applies to the counterclaims the Counterclaim-Plaintiffs repleaded in their June 29 and July 3, 2020 pleadings.
2. For the reasons set forth in the Dismissal Order, the Counterclaim-Plaintiffs' counterclaims should be, and by this Order are hereby, dismissed without prejudice to Counterclaim-Plaintiffs' rights to appeal.
3. SKAT shall not be required to file an answer to the Counterclaim-Plaintiffs' counterclaims or otherwise move to dismiss the counterclaims pursuant to Federal Rule of Civil Procedure 12(b).

Dated: New York, New York
August 5, 2020

By: /s/ Michelle A. Rice
(e-signed with consent)
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*Roth 401(k) Plan, PAB Facilities Global
LLC Roth 401(k) Plan, Trailing Edge
Productions LLC Roth 401(k) Plan, Cedar
Hill Capital Investments LLC Roth 401(k)
Plan, Fulcrum Productions LLC Roth
401(k) Plan, Limelight Global
Productions LLC Roth 401(k) Plan,
Keystone Technologies LLC Roth 401(k)
Plan, Tumba Systems LLC Roth 401(k)
Plan, Bareroot Capital Investments LLC
Roth 401(k) Plan, Cantata Industries LLC
Roth 401(k) Plan, Dicot Technologies
LLC Roth 401(k) Plan, True Wind
Investments LLC Roth 401(k) Plan,
Roadcraft Technologies LLC Roth 401(k)
Plan, Fairlie Investments LLC Roth
401(k) Plan, and Monomer Industries
LLC Roth 401(k) Plan*

By: /s/ Alan E. Schoenfeld
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*Counsel for Defendants-Counterclaim-
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SO ORDERED:

Hon. Lewis A. Kaplan
United States District Judge